1989

Sharleen M. McReynolds v. Glenn L. McReynolds: Brief of Appellant

Utah Court of Appeals

D. David Lambert; Howard, Lewis & Petersen; Attorneys for Appellant.
Richard B. Johnson; Attorney for Respondent.

IN THE COURT OF APPEALS

DOCKET NO. 890172 OF THE STATE OF UTAH

SHARLEEN M. McREYNOLDS,	:	
Plaintiff-Appellant,	:	Case No. 890172-CA
vs.	:	
GLENN L. McREYNOLDS,	:	Category No. 14b
Defendant-Respondent.	:	

BRIEF OF APPELLANT

APPEAL FROM THE ORDER AND JUDGMENT OF
THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY,
STATE OF UTAH, THE HONORABLE
GUY E. BALLIF, PRESIDING.

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APPELLANT

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RESPONDENT

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LIST OF PARTIES

The caption contains a complete list of all the parties to the proceeding.

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IN THE COURT OF APPEALS

OF THE STATE OF UTAH

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BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from an Order and Judgment and from post-trial rulings following a trial to the bench concerning delinquent child support. This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(h) (Supp. 1988).

ISSUE PRESENTED

Did the trial court err in failing to award judgment for the unpaid amount of child support owed by the defendant?

STATEMENT OF THE CASE

A. Nature of the Case and Course of Proceedings. This is an action upon plaintiff's petition filed August 4, 1986, to

recover unpaid child support from the defendant, who is the ex-husband of plaintiff. In addition, plaintiff sought a modification of the divorce decree to increase the amount of child support payments and to enforce other provisions of the divorce decree. (R. 55.)

In a bench trial, the trial Court found a substantial change of circumstances and ordered an increase in child support. (R. 284-85.) The Court adopted a Stipulation by the parties of unpaid child support through July, 1986, and awarded judgment in that amount. The Court also determined the amount of unpaid child support from August, 1986, through May, 1988, to be $3,520.00, but then refused to award judgment for that amount. (R. 283-84.) Plaintiff then filed a Motion For a New Trial or Amendment of Judgment on November 7, 1988 (R. 298), which motion was denied by the Court's Ruling of February 21, 1989 (R. 326). Plaintiff thereafter perfected this appeal, which goes only to the issue of judgment for unpaid child support from August, 1986, through May, 1988.

B. Statement of Facts. The plaintiff and defendant in this case were divorced on March 7, 1984 pursuant to a decree entered in Evanston, Wyoming. (R. 28.) On June 29, 1984 an Order and Judgment was entered in Davis County, Utah, pertaining to those matters not adjudicated by the Wyoming decree. (R. 52-54.) Those matters included the care, custody and control of the minor children of the parties, visitation for the defendant,

child support, alimony, debts and a division of marital property. (R. 52-54.)

From the date of the entry of the original child support order on June 29, 1984, until the date of plaintiff's petition for a judgment for delinquent child support on August 4, 1986, defendant paid plaintiff no child support whatsoever. (R. 346-347.) After plaintiff filed her petition, defendant made a partial payment toward delinquent child support, leaving a support delinquency in the amount of $1,120.00 through July, 1986. (R. 241-242, 445-446.)

Prior to the trial below, the trial court entered a pretrial order establishing the amount of unpaid child support through July, 1986, in the amount of $1,120.00. This pretrial order specified all issues to be tried and contempt of the plaintiff was not listed as an issue. (R. 241-243.) On May 18, 1988, the Court heard testimony concerning the issues set forth in the Pretrial Order, including the amount of unpaid child support for the period of August 19, 1986, through May, 1988. (R. 242.) After hearing the evidence, the Court adopted the Stipulation of the parties relating to the amount of unpaid child support through July of 1986, and incorporated the following findings into its Order and Judgment:

> 2. The Court concludes that the amount to which the plaintiff would otherwise be entitled for child support accruing from August, 1986 through the end of May, 1988, is the sum of $3,520.00.

(R. 284, para. 2; Addendum.)

The trial court then refused to award judgment for the above-determined amount of unpaid child support based upon the following additional findings:

> 3. The Court concludes that the plaintiff and her current husband have purposefully intimidated the defendant and frustrated his attempts to visit with his children by repeatedly changing their address and telephone numbers, forcing calls about the children through plaintiff's present husband and a law firm answering and forwarding facility, and have not cooperated in meeting scheduled telephone calls from defendant and the children as ordered by Domestic Relations Commissioner, all of which have caused defendant considerable anxiety, expenditure of time and expense which could have been avoided by reasonable efforts on the part of plaintiff and her husband to afford him his visitation rights.
>
> 4. In that regard, the Court concludes that the claims of the defendant are substantially true as it related to his frustrated visitation with his minor children over a period of time from July of 1986 to the present time. The Court, therefore, concludes that the accrued support for the period between July and the present time as found in the sum of $3,520.00 cannot, in good conscience, be allowed the plaintiff because of the conduct of the parties in which she has been principally responsible in denying the rights of visitation to the defendant.

(R. 284, para. 3 and 4; Addendum.)

The plaintiff made a motion for a new trial or for an amendment of the judgment based principally upon the case of Race v. Race, 740 P.2d 253 (Utah 1987), and a line of prior Utah cases which have held that denial of visitation may not be used

as a means of eliminating a child support obligation. (R. 289-295, 298.) The trial court denied the plaintiff's motion and refused to amend the order and judgment. (R. 326.)

SUMMARY OF ARGUMENT

The compelling public policy concern of insuring that children are properly supported by those having responsibility for them is reflected in the Utah Supreme Court's emphatic declaration that child support is the right of a child and payment of support may not be conditioned upon issues of visitation. Enactments of the Utah Legislature and a series of Utah Supreme Court cases reinforce the important public policy that child support is a possessory right of a child quite apart from issues relating to the conduct of the divorced parents. Since child support payments are an entitlement of the child, they are to be insulated from intrusion, including visitation right disputations, no matter how egregious the conduct of a parent may be. Utah does not stand alone in this position. In fact, the majority of jurisdictions are in accord with the position that a violation of visitation rights does not suspend a non-custodial parent's support obligation. Rather, a non-custodial parent has remedies available through the courts to enforce visitation rights without interfering with the welfare of the child.

A few older Utah cases seem to suggest that a custodial parent may be barred from trying to reimpose support obligations on a non-custodial parent where the custodial parent voluntarily assumes that obligation in exchange for consideration. The Utah Supreme Court has stated that the rationale underlying such decisions is weak, and the circumstances under which such a waiver or estoppel would come into play are rare. Moreover, these cases have been superceded by the more recent authority recognizing the superior rights of the child to receive support. The facts of the present case would not give rise to a claim of waiver or estoppel.

For these reasons, the trial court erred in refusing to award judgment for the unpaid child support. The decision of the trial court should be overturned and judgment for the unpaid child support should be awarded to plaintiff.

ARGUMENT

POINT I

THE UTAH SUPREME COURT HAS DECLARED THAT CHILD SUPPORT IS THE RIGHT OF A CHILD AND PAYMENT OF SUPPORT MAY NOT BE CONDITIONED UPON ISSUES OF VISITATION.

A. Even Extreme Conduct by a Party in Denying Visitation of Minor Children Will Not Excuse Payment of Support by the Parent Denied Such Visitation.

Recently, the Supreme Court of Utah considered a situation where the trial court conditioned payment of child support on the development of a visitation schedule. In overturning the trial court on that issue the Supreme Court held:

> Although the awarding of visitation and child support is within the court's discretion, the court must consider the child's paramount right to and need for his parents' support. Utah Code Ann. §§ 78-45-3 and -4; Woodward v. Woodward, 709 P.2d 393 (Utah 1985). Court-ordered child support is an obligation imposed for the benefit of the children, not the divorcing spouse.

Race v. Race, 740 P.2d 253, 256 (Utah 1987) (emphasis added).

In Race, the mother had been held in contempt by the trial court for her refusal to allow the defendant to exercise his visitation rights. Even in the face of this contempt citation, however, the Utah Supreme Court refused to allow child support payments to be used as a method of coercing visitation. This demonstrates the strength of the proposition that support obligations are imposed for the benefit of the children and are not to be tampered with based on the misconduct of a parent.

The policy reasons underlying the position of the Utah Supreme Court are well founded and have been articulated by the courts and the legislature for many years. The Utah legislature has emphatically and unequivocally declared that "every man shall support his child." Utah Code Ann. § 78-45-3 (1987). That same year, the Utah Supreme Court held that a parent cannot rid himself of his duty of support even by purporting to transfer it to another individual by contract. Gulley v. Gulley, 570 P.2d 127 (Utah 1977). In earlier cases, the Utah Supreme Court has declared that "the right of a child to support is a paramount right which it possesses quite apart from any consideration relating to the conduct of its divorced parents,"

Earl v. Earl, 17 Utah 2d 156, 406 P.2d 302, 303 (1965); "children are unconditionally entitled to support from their parents," Reeves v. Reeves, 556 P.2d 1267, 1268 (Utah 1976); and "[t]he right to child support is a right of the children themselves," Hansen v. Gossett, 590 P.2d 1258, 1260 (Utah 1979).

The state has a compelling interest to insure that the rights of minors are fully enforced, particularly since minors are most often without the means to enforce those rights themselves. Paramount among these rights is the right to receive support from one's parents. When that right of support becomes a bargaining chip in a conflict between parents, then the rights of the child are trampled upon and the child is victimized.

In 1987, the Utah legislature enacted a law making each installment of child support a judgment. The pertinent portions of that enactment are as follows:

> (1) Each payment or installment of child or spousal support under any child support order, as defined by Subsection 78-45d-1(3) [now 62A-11-401(3)], is, on and after the date it is due:
>
> (a) a judgment with the same attributes and effect of any judgment of a district court, except as provided in Subsection (2);
>
> (b) entitled, as a judgment, to full faith and credit in this and any other jurisdiction; and
>
> (c) not subject to retroactive modification by this or any other jurisdiction, except as provided in Subsection (2).

> (2) A child or spousal support payment under a child support order may be modified with respect to any period during which a petition for modification is pending, but only from the date notice of that petition was given to the obligee, if the obligor is the petitioner, or to the obligor, if the obligee is the petitioner.

Utah Code Ann. § 30-3-10.6 (1987).

While the above statute does not cover the entire period for which delinquent child support is sought in the present case, it indicates the desire of the Utah legislature, which reflects public policy, to preserve child support against any interference. The statute accomplishes this by giving to each installment of child support the full force and effect of a court judgment.

Another Utah Supreme Court case which was decided in identical fashion to Race, but was decided many years earlier, is the case of McClure v. Dowell, 15 Utah 2d 324, 392 P.2d 624 (1964). In that case, the custodial parent (the mother) concealed herself and the children from the father. The trial court found that the father failed to provide support only because he could not locate his ex-wife and children. Despite the conduct of the custodial parent, the trial court and the Utah Supreme Court held that the father was not relieved of his support obligation, although principles of equity did relieve him of the obligation to pay interest on the amounts which had become due.

The courts and legislature of Utah have repeatedly and forcefully articulated the policy that child support payments are an entitlement of the child, not of the custodial parent, and as such, are to be insulated from intrusion, including disputation over visitation rights. Plaintiff-appellant respectfully submits that Race v. Race is controlling in the present circumstances and that the trial court erred in failing to award judgment for the $3,520.00 in unpaid child support.

B. The Majority of Other Jurisdictions are in Accord With the Utah Position on the Issue of Child Support.

The Supreme Court of Colorado recently held:

> Although a trial court has the discretion to consider a parent's mistaken belief that child support is conditioned on visitation rights as a factual circumstance in deciding whether a parent has failed without cause to provide reasonable support, [citation omitted], a violation of visitation rights does not legally suspend the obligation to support one's children. County of Clearwater, Minn. v. Petrash, 198 Colo. 231, 598 P.2d 138 (1979); Gruber v. Wallner, 198 Colo. 235, 598 P.2d 135 (1979).

Petition of R.H.N., 710 P.2d 482, 488 (Colo. 1985) (en banc).

The Supreme Court of Oklahoma overruled an earlier Oklahoma Court of Appeals case which had excused child support for the period that the mother had refused to allow the father's visitation. In so doing, the Oklahoma Supreme Court held:

> Visitation is primarily for the benefit of the child, and ordinarily a support order must be paid even if the custodial parent wrongfully denies the non-custodial parent's right to visitation.

> The custodial parent's misconduct cannot destroy the child's right to support, nor may child support payments be used as a weapon to force a child's visitation with a non-custodial parent. The duty to support one's minor child is a continuing obligation. Entitlement to child support is not contingent upon visitation rights.

Hester v. Hester, 663 P.2d 727, 729 (Okla. 1983) (emphasis added) (overruling Irby v. Irby, 629 P.2d 813 (Okla. App. 1981)).

Likewise, the Supreme Court of Wyoming recently reviewed the weight of authority on the issue of child support and concluded:

> While many older cases hold to the contrary, the modern view is that the denial of visitation rights by the custodial parent or the child does not constitute a change in circumstances which justifies the reduction or termination of the noncustodial parent's support obligation.

Broyles v. Broyles, 711 P.2d 1119, 1127 (Wyo. 1985).

Numerous other state courts have made similar rulings, a sample of which includes the following: Marie C. G. v. Guy L., 133 Misc. 2d 291, 506 N.Y.S. 2d 547 (1986); State ex rel. Southwell v. Chamberland, 361 N.W.2d 814 (Minn. 1985); Flynn v. Flynn, 15 Ohio App. 3d 34, 472 N.E.2d 388 (1984); Coleman v. Burnett, 169 Ga. App. 297, 312 S.E.2d 627 (1983); State ex rel. Williams v. Williams, 647 S.W.2d 590 (Mo. App. 1983); and Appert v. Appert, 80 N.C. App. 27, 341 S.E.2d 342 (1986).

The policy rationale behind the above-cited decisions, which have declared the support obligation to be independent of

visitation rights, is identical to that stated in Utah decisions and is simply that the welfare of the child is paramount. This is not to say, however, that the non-custodial parent whose visitation rights have been impeded is left without remedy.

C. A Non-custodial Parent has Proper Remedies to Enforce Visitation Rights.

When a custodial parent interferes with the visitation rights of a non-custodial parent, the non-custodial parent may initiate legal action to enforce compliance with the terms of the custody decree. The court may then use its contempt power against the custodial parent to enforce visitation privileges. The Oregon Court of Appeals contemplated this situation, and declared:

> Though the Court may use its contempt power against the custodial parent to enforce visitation privileges, a contempt citation might well be useless where, as here, the children now refuse to see the non-custodial parent--either on their own volition or as a result of the explicit or implicit urging of the custodial parent. In any event, the welfare of the children is paramount. The duty of a noncustodial parent to support his or her children is contingent only upon the needs of the children and the ability of each of the parents to provide support -- and is not dependent upon the opportunity of the parent to exercise visitation privileges.

Matter of Marriage of Dooley, 30 Or. App. 989, 569 P.2d 627, 629 (1977) (emphasis added).

In the present case, respondent failed to utilize the proper methods available to him in the courts to remedy his

visitation problem. Had he done so, and the proper remedy still proved insufficient to resolve the problem, in such an extreme circumstance further remedy might have been appropriate. For example, in Peterson v. Peterson, 530 P.2d 821 (Utah 1974), the court "suspended" payment of support until the custodial parent was purged of contempt. The court in Peterson did not, however, relieve the non-custodial parent of his support obligation. A remedy such as temporary suspension of payments is extreme and should be imposed only under circumstances where the welfare of the child would not be jeopardized. The Peterson case turned on the contempt issue, but in the present case defendant did not use the procedures available to him and a contempt citation was never issued. If Peterson had turned simply on general principles of equity, however, the Race decision, as more current authority, would resolve the issue in favor of the plaintiff in the present case.

POINT II

APPELLANT'S RECOVERY IN THE PRESENT CASE IS NOT BARRED BY LACHES, ACQUIESENCE OR EQUITABLE ESTOPPEL.

The 1956 case of Larsen v. Larsen, 5 Utah 2d 224, 300 P.2d 596 (Utah 1956), raises the issue of whether Utah courts will recognize laches, acquiesence or equitable estoppel as a means of denying judgment for unpaid child support. Larsen involved an allegation by a non-custodial parent that the custodial parent refused to accept support payments and affirmatively represented to him that she had remarried and that her new husband was supporting the child and that "all she wanted from

the defendant is that he should refrain from trying to see her or the child." Id. at 596. The non-custodial parent agreed to this arrangement and further alleged that he relied on such representations and remarried and undertook obligations which he would not otherwise have undertaken. On that basis, the trial court excused the delinquent child support on the theory of laches, acquiesence and equitable estoppel. On appeal, the Utah Supreme Court reversed the trial court because of inadequate findings on the issues of laches, acquiesence or estoppel.

The Larsen court did not hold that a parent may give up his visitation rights and thereby be relieved of his support obligation, but it does appear to support the notion that if a custodial parent voluntarily assumes the support obligation of a non-custodial parent in exchange for the relinquishing by the non-custodial parent of his visitation privileges, then the custodial parent may thereafter be barred from trying to reimpose the support obligation on the non-custodial parent. In the present case, there is no evidence to suggest that the plaintiff in any way agreed to provide full support for the minor children in exchange for defendant's abandonment of his visitation rights. Similarly, there is no evidence that defendant agreed to give up his visitation rights. In fact, defendant's chief complaint is that his visitation rights had been interfered with. Therefore, even if Larsen were still good law in light of Race, it would certainly not apply in the present case.

Twenty years after Larsen, the Utah Supreme Court decided the case of Wasescha v. Wasescha, 548 P.2d 895 (Utah 1976). In that case, the Supreme Court of Utah affirmed the trial court's finding that the plaintiff's action did not seek to enforce the children's right of support and that the case was factually similar to Larsen in that the plaintiff agreed to waive child support if the defendant would leave her and her family alone. Defendant agreed to do so and the trial court found that "the father pleaded a valid contract of settlement therefor, and/or an equitable estoppel or waiver thereof." Id. at 895. The plaintiff in Wasescha was not seeking reimbursement of child support, rather, she wanted unpaid child support to be placed in an education trust fund for the children. The plaintiff and her new husband had completely taken over support of the child as per an agreement with the defendant that he would no longer exercise visitation rights. In affirming the trial court, the Supreme Court stated:

> We think the facts of this case comport favorably with the decision of the trial court and principles enunciated in the whorl of debatable wisdom espoused in Larsen v. Larsen (supra), Price v. Price, Bags v. Anderson, and others. Each case hangs on a spider thread of that which the spider thinks is right to spin. One thing certain: The right to barter away a child's claim to support is not a commodity in the market overt, but if that claim has been satisfied by one not claiming reimbursement nor by one claiming the children were denied the right, it is no longer subject to double sale by double talk or flight from equity.

Id., at 896 (emphasis added).

This language makes it clear that the Supreme Court considered its prior decision in Larsen to be based on the thinnest of grounds and its holding in Wasescha was that equitable estoppel or waiver would apply only where the court finds a contractual agreement to release the obligation of child support and where that support obligation has been adequately assumed by another.

In the present case, no such contractual arrangement existed. Comparing the Larsen line of cases with the case at hand is essentially comparing apples with oranges. Even if Larsen applied to the facts of the present case, the principles of Larsen would be in direct conflict with those articulated by the Utah Supreme Court less than two years ago in Race v. Race, and would be overruled thereby.

CONCLUSION

The case of Race v. Race is controlling in the present circumstances, and holds that child support payments are the right of the child and may not be contingent upon a parent's ability to exercise visitation rights. No matter how egregious the actions of a custodial parent may be, the rights and welfare of the child are paramount, and the non-custodial parent may pursue proper remedies which do not infringe upon the child's right to support in order to rectify a visitation dispute.

Therefore, plaintiff-appellant respectfully requests that portion of the trial court's Order and Judgment which refused to award judgment for the $3,520.00 in unpaid child support, be reversed and that the trial court be ordered to enter judgment in favor of plaintiff in that amount.

DATED this 19th day of June, 1989.

D. David Lambert

D. DAVID LAMBERT, for:
HOWARD, LEWIS & PETERSEN
Attorneys for
Plaintiff/Appellant

MAILING CERTIFICATE

I hereby certify that four true and correct copies of the foregoing were mailed to the following, postage prepaid, this 20th day of June, 1989:

Richard B. Johnson
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1327 S. 800 E. #300
Orem, UT 84085

D. David Lambert

~~SECRETARY~~

ADDENDUM

Order and Judgment

D. DAVID LAMBERT (1872), for:
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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

SHARLEEN M. McREYNOLDS aka SHARLEEN COLTON, Plaintiff, vs. GLENN L. McREYNOLDS, Defendant.	: : : : : : :	**ORDER AND JUDGMENT** Civil No. CV-87-352

This matter came on for hearing before the Honorable George E. Ballif on the 18th day of May, 1988. The plaintiff was present and represented by her attorney, Michael Petro. The defendant was present and represented by his attorney, Richard B. Johnson. The Court discussed with counsel the issues framed by the Pre-trial Order and other matters desired by both sides to be brought before the Court and proceeded to hear evidence. The Court, having entered its Findings of Fact and Conclusions of Law, now makes and enters the following:

ORDER AND JUDGMENT

1. The Court adopts the stipulation of the parties and awards judgment in

favor of the plaintiff against the defendant in the sum of $1,120.00 for child support accruing through July, 1986.

2. The Court concludes that the amount to which the plaintiff would otherwise be entitled for child support accruing from August of 1986 through the end of May, 1988, is the sum of $3,520.00.

3. The Court concludes that the plaintiff and her current husband have purposefully intimidated the defendant and frustrated his attempts to visit with his children by repeatedly changing their address and telephone numbers, forcing calls about the children through plaintiff's present husband and a law firm answering and forwarding facility, and have not cooperated in meeting scheduled telephone calls from defendant and the children as ordered by Domestic Relations Commissioner, all of which have caused defendant considerable anxiety, expenditure of time and expense which could have been avoided by reasonable efforts on the part of the plaintiff and her husband to afford him his visitation rights.

4. In that regard, the Court concludes that the claims of the defendant are substantially true as it related to his frustrated visitation with his minor children over a period of time from July, 1986 through the present time. The Court, therefore, concludes that the accrued support for the period between July and the present time as found in the sum of $3,520.00 cannot, in good conscience, be allowed the plaintiff because of the conduct of the parties in which she has been principally responsible in denying rights of visitation to the defendant.

5. The Court concludes that there has been a material change of circumstances in that the children are older and that the expense of their care has

increased since the original Order of support was entered. Considering the income of the respective parties as set forth in the Court's decision and the guidance of the 1987 child support schedule prepared by the Division of Recovery Services the Court concludes that the sum of $150.00 per child (three children, two plaintiff's custody) would be an appropriate sum for the defendant to pay for the support of his minor children commencing June of 1988.

6. The Court concludes that the obligation to First Security Bank on the Visa card in the amount of $421.69 was to be paid by the defendant inasmuch as paragraph 4 of the Davis County Judgment orders defendant to assume and pay and hold plaintiff harmless of all debts incurred during the course of the marriage.

7. The plaintiff and defendant shall provide coverage for medical and health insurance through whatever source is available to them through employment. The defendant's insurance, if any, shall be the primary carrier and the plaintiff's insurance, if any, the secondary coverage. In the event that here is no coverage, or there are excess amounts of expense, each party is responsible for the one-half of the necessary medical expenditures including dental expense.

8. The Court concludes that the Decree and prior Orders in the case should be amended to fix the visitation of the defendant with the minor children, The Court concludes the Visitation Order shall be as follows:

> (a) While the defendant resides out of the State of Utah, he is entitled to one weekend per month visitation with the children provided he is given 30 days notice of the intent to exercise such visitation and specifically designate the weekend which shall commence at 6:00 p.m. Friday and terminated at 9:00 p.m. the following Sunday. This visitation may be exercised only upon the defendant posting a certified letter to plaintiff not less than 30 days in advance of the commencement of the intended weekend visitation.

(b) Defendant is entitled to visitation with the children for one week during the spring school break, every other year commencing with the year 1989. This visitation may be exercised in Utah or if desired, at the defendant's expense, for transportation to the State of California.

(c) Defendant is further entitled to one week of the Christmas vacation, the first week considered to be from the first of the Christmas holiday to 12:00 noon on Christmas Day at which time the second week of visitation shall commence. This visitation shall begin with Christmas of 1988 at which time defendant's visitation shall commence at noon on Christmas Day until the day following New Year's Day. Plaintiff shall be responsible for the travel expense of the children to defendant's place of residence and the defendant shall be responsible for return transportation.

(d) Defendant shall be entitled to not less than two weeks visitation with the children during the summer vacation, which he must designate by certified letter to the plaintiff at least one month prior to the commencement of the summer vacation. Defendant is responsible for transportation to and from the residence of the children and his residence for the summer vacation.

(e) Any additional visitation days or additional time in the summer may be agreed to between the parties if both subscribe to a written documents so providing and subscribed to by each party.

(f) Telephone visitation once a week on Sundays from 7:45 to 8:15 p.m. Utah time limited to 15 minutes duration.

(g) All visitation periods shall be exercised in a prompt manner so that both parties can make their plans accordingly. The non-custodial parent shall pick the children up from the front steps of the custodial parent's residence no earlier than 15 minutes prior and no later than 15 minutes after the visitation period commences. Return of the children to the front steps of the custodial parent's residence shall also be subject to the 15 minute rule. The custodial parent shall also be subject to the 15 minute rule. The custodial parent shall have the children fed and ready on time for visitation with sufficient clothing packed and ready for the visitation period.

(h) In the event the children are ill and unable to visit, a makeup visitation will be allowed to the non-custodial parent on the next succeeding weekend. However, if the non-custodial parent fails for any reason not to exercise his visitation for reasons of health or for any other reason, there will be no makeup visitation.

(i) The children will not be permitted to determine whether they wish to visit with the non-custodial parent. Personal plans of the custodial parent or children, school activities, church activities, or other consideration will not be reasons for failing to adhere to the visitation scheduled set forth in the Order. Only substantial medical reasons will be considered sufficient for postponement of visitation.

(j) Both parties will provide addresses and contact telephone numbers to the other party and will immediately notify the other party of any emergency circumstances of substantial changes in the health of the children.

(k) The non-custodial parent shall, in addition to the visitation set forth in this Order, have the unlimited right to correspond with the minor children of the parties.

9. Both parties are restrained and enjoined form making derogatory and disparaging comments about the other party or, in any way, diminishing the love, respect, and affection that the children have for either party.

10. Contact for visitation arrangements are not to be made through Paul Colton, plaintiff's husband.

11. The Court makes no other Order on the medical or dental needs other than those hereinabove provided for.

12. Each side shall bear their own costs and attorney's fees in this matter.

13. Interest shall be awarded plaintiff on the judgment award in paragraph 1 above in the amount of $336.00, calculated according to the principles set forth in Stroud v. Stroud, 738 P.2d 649 (Utah 1987), together with judgment interest at the rate of twelve percent (12%) per annum from October 1, 1988.

14. Pursuant to U.C.A. § 78-45d-1 et. seq. plaintiff shall be entitled to

mandatory income withholding against defendant's income for payment of the support order made herein in accordance with the provisions of said statute.

DATED this 31st day of October, 1988.

BY THE COURT:

GEORGE E. BALLIF
District Court Judge